

# Permanent Establishment

This publication is provided as a guide only. It is not intended as a substitute for the Employer Health Tax Act and Regulations.

## Employer Health Tax (EHT): What is it?

EHT is a payroll tax paid by employers. If you are an employer, you must pay EHT if you pay remuneration to:

- employees who report for work at a permanent establishment in Ontario
- employees who do not report for work at a permanent establishment, but who are paid from or through a permanent establishment of the employer in Ontario.

Remuneration includes salaries and wages, gratuities paid through an employer, bonuses, commission and other similar payments, vacation pay, taxable allowances and benefits, directors' fees, payments for casual labour, amounts paid by an employer to top up benefits, advances of salaries and wages, and stock option benefits.

## Reporting for work at a permanent establishment

An employee is considered to report for work at a permanent establishment of an employer if the employee comes to the permanent establishment in person to work.

If the employee does not come to the permanent establishment in person to work, the employee is considered to report for work at a permanent establishment if he or she may reasonably be regarded as attached to the permanent establishment.

The ministry looks at the following factors when determining whether an employee is **attached** to the permanent establishment:

- the nature of the duties performed by the employee
- the place where the employee regularly performs his or her duties
- the place from which the employee is hired

- the place from which the employee regularly receives instructions or directions from the employer, through any type of communication
- the place from which the employee is supervised
- the place to which the employee submits attendance records and expense claims
- the place from which the employee receives equipment, uniforms, etc.

## **Reporting for work at permanent establishments inside and outside Ontario**

If an employee reports for work at permanent establishments of the employer in Ontario and also outside Ontario during a year, all of the remuneration paid to the employee is subject to EHT.

However, if the minister is satisfied that the employee reports for work at the permanent establishment outside Ontario for all or substantially all of the year, none of the remuneration paid to the employee is subject to EHT. For administrative purposes, **all or substantially all** generally means 90 per cent or more.

## **Paid from or through a permanent establishment**

If the employee does not report for work at a permanent establishment (i.e., does not come in to work in person and is not attached to a permanent establishment) then the remuneration paid to the employee is still taxable if the employee is paid from or through an Ontario permanent establishment.

## **What is a permanent establishment?**

A permanent establishment includes:

- any fixed place of business
- the principal place where the employer conducts business and each place where the employer carries on a substantial portion of the business, if the employer has no fixed place of business
- a business carried on through an employee or agent who has general authority to contract for the employer or fill orders from the employer's merchandise
- a place where, and at the time when, the employer uses substantial machinery or equipment
- a place where an employer produces, grows, mines, creates, manufactures, fabricates, improves, packs, preserves, processes or constructs anything (in whole or in part), if the employer does not otherwise carry on business in Canada in a year, whether or not the item is exported prior to sale
- land or premises owned or leased by the employer

- the head office (or the registered office), as stated in a corporation's charter or by-laws
- a place where an insurance corporation is registered or licensed to do business.

## **Fixed place of business**

A permanent establishment includes any fixed place of business in Ontario where day-to-day business activities are carried on (including a function of government), whether it is for gain or non-profit. For example, this could include an office, agency, branch, factory, farm, gas or oil well, mine, timberland, warehouse or workshop.

Some other criteria include:

- The place of business may exist for only part of the year (and does not need to exist for a long time).
- The place of business usually belongs to the employer or the employer has certain control and authority over it.

## **Office**

An office is a permanent establishment of the employer if business is carried on there.

An office is not a permanent establishment if it is:

- maintained and controlled by the employee at their own choice and expense
- only used for storage of records or for advertising or display purposes
- maintained solely to purchase merchandise.

## **Office in a salesperson's or other employee's residence**

To determine whether an employee's home office qualifies as a permanent establishment of the employer, the ministry looks at the following factors:

- whether the office is a room or substantial area in the employee's residence used exclusively for the employer's business (i.e., it is strictly for business use at any time and for no other purpose)
- whether the employee is required to provide an office as a condition of employment
- whether the employer pays reasonable (fair market value) rent for the use of an office, which is a room or area set aside in the employee's home, that is maintained and controlled by the employer and is accessible to other individuals employed by or doing business with the employer

- whether sales orders, which may be forwarded for processing elsewhere (e.g., at the employer's head office or regional office location), are regularly accepted there
- whether the employer pays for supplies, maintenance and office equipment costs (e.g., telephone, computer, fax machine)
- whether the office is advertised by telephone listings, business signs, inclusion in sales or product advertising, etc., to indicate its presence
- whether the employee's residence is commercially registered as a place of the employer's business, and for local property tax purposes, as appropriate.

## **Warehouse**

A warehouse which is used by the employer, but is not owned by the employer or under the employer's control, is not considered a permanent establishment of the employer. However, where an employee or agent of the employer has the authority to direct the disposition of merchandise owned by the employer and stored in the warehouse, the warehouse would be under the control of the employer and would constitute a permanent establishment of the employer.

## **No fixed place of business**

An employer who does not have a fixed place of business is considered to have a permanent establishment in the principal place where business is done and in each place where a substantial portion of the employer's business is carried on. The principal place of business is the place where the majority of the following activities take place:

- meetings of the board of directors
- signing, contracting and decision-making by authorized officials
- accounting and bookkeeping activities
- negotiating business contracts
- corporate banking
- safekeeping of assets.

## **Employee or agent with general authority to contract**

An employer is considered to have a permanent establishment in Ontario if business is carried on in Ontario through an employee or agent who has general authority to contract for the employer and the employee or agent is resident in Ontario. General authority to contract means:

- the employee or agent is able to bind the employer in most sales transactions (i.e., contracting for specific product lines, not necessarily the complete product line of the business) or can conclude contracts on behalf of the employer

- the authority is exercised repeatedly (not necessarily regularly).

### **Fills orders from stock of merchandise**

An employer is considered to have a permanent establishment in Ontario if an employee or agent of the employer fills orders from a stock of merchandise in Ontario owned by the employer.

The employee or agent must **regularly** fill orders (i.e., according to an established pattern). This relates to the usual mode of operation, not the proportion of the orders compared to the total activities of the company.

A permanent establishment could exist even if only a small percentage of the employer's total sales were filled from stock within the province.

### **Use of substantial machinery or equipment**

A permanent establishment includes a place where an employer uses substantial machinery or equipment.

**Use** means the actual use of the machinery or equipment for which it is intended. It also means use by the employer. Use does not occur if the machinery or equipment is rented to or used by another person (e.g., by a subcontractor hired by the employer). The machinery or equipment must be either owned or leased by the employer and must be used by the employer.

The display or demonstration of samples by a sales representative or an agent is not considered use for the purpose of this provision.

### **Interpretation of substantial**

Whether machinery or equipment can be described as substantial depends on the employer's type of business. Factors to be considered include:

- the quantity, type, size and dollar value of machinery or equipment used in the employer's business (ships and trucks are not considered to be machinery or equipment for this purpose)
- the extent of the employer's gross revenue generated by the use of the machinery or equipment.

### **Examples where a permanent establishment does not exist**

Generally, locations where the following activities take place are not considered a permanent establishment:

- an employer conducts business from a source outside Ontario, through mail order and catalogue sales, and does not have a stock of goods in Ontario
- merchandise is held only for promotional or display purposes

- an independent agent has a stock of merchandise owned by the employer from which the agent regularly fills orders. An independent agent is one who does not have general authority to contract on behalf of the employer.

## Request for written interpretations

To obtain a written interpretation on a specific situation not addressed in this publication, please send your request in writing to:

Ministry of Finance  
Advisory Services, Employer Health Tax  
33 King Street West, 3rd Floor  
Oshawa ON L1H 8H5

## Related publications

Other publications which provide further details on this topic include:

- **Office in an Employee's Residence**
- **Employee-Employee Relationships**
- **Remuneration**

## For more information

Visit [ontario.ca/ehf](http://ontario.ca/ehf) or contact the Ministry of Finance at 1 866 ONT-TAXS (1 866 668-8297) or 1 800 263-7776 for teletypewriter (TTY).

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